UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27

AMALGAMATED SUGAR CO. LLC

and **Cases: 27-CA-243789**
27-CA-248764

BAKERY CONFECTIONERY, TOBACCO WORKERS & GRAIN MILLERS, LOCAL 284g, AFL-CIO

RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

The Amalgamated Sugar Company LLC ("Amalgamated Sugar" or "Company"), Respondent in the above captioned matter, files this Motion for Summary Judgment with the National Labor Relations Board, through its Executive Secretary, pursuant to the Board Rules and Regulations §102.24 and §102.50. The Charging Party is the Bakery Confectionery, Tobacco Workers & Grain Millers Local 284g, AFL-CIO ("BCTGM" or "Union"). There are no genuine issues of material fact that would restrain the Board from deciding the motion.

This motion is grounded in the NLRB's decision in *United Parcel Service, Inc.*, 369 NLRB No. 1 (December 23, 2019). In that case, the NLRB reinstated the long-standing principle favoring deferral to arbitration and applied it retroactively to "all pending cases in whatever stage." More specifically, *United Parcel* re-established the policies for pre-arbitral deferral established in *United Technologies Corp.*, 268 NLRB 557 (1984).

The evidence and information contained in this motion, to the best of Respondent's belief, has been submitted to the agency in the course of the investigation of the two charges. Respondent has followed the guidance of the Board's Rules and Regulations at section 102.24(b) of the non-

requirement of accompanying evidence, except in the limited capacity on the point of the absence of a genuine issue.

The instant case involves the above parties who have had a long and productive collective bargaining relationship for about 60 years. The parties have a collective bargaining agreement that covers four facilities and their agricultural maintenance operations, and the charges emanate from one facility – the Nampa, Idaho plant.

The case involves 11 section 8(a)(1) allegations and four (4) section 8(a)(3) allegations, none of which are discharges. Upon information and belief, five of the 11 section 8(a)(1) allegations involve a single event in June 2019. This would leave six (6) independent section 8(a)(1) allegations.

The allegations are "garden-variety" grievances under not only the parties' collective bargaining agreement, but also most collective bargaining agreements. They include job assignments, promotions, transfers, raises, discipline/warnings, non-discrimination, threats, pay for working the correct classification, incorrect pay, and poor performance appraisals. As the Board found in *United Aircraft Corporation*, 204 NLRB 879 at 880, that matters like this: "... are also best resolved through the parties agreed-upon arbitration procedures. By the same token, the alleged acts of harassment and discrimination, it seems to us, could also be resolved by the parties' grievance procedures."

The regional office responsible for the case has refused Respondent's request to defer the allegations to the traditional grievance-arbitration process and has issued a complaint and set a hearing on March 18, 2020. This motion for summary judgment is brought in good faith and follows the NLRB's admonishment in *United Parcel* that its decision applies retroactively "to all pending cases in whatever stage." (Emphasis supplied).

ISSUE

The issue is whether the allegations in the captioned case should be deferred to the grievance-arbitration process of the collective bargaining agreement of the parties.

STATUS OF THE CASE

The case began on June 24, 2019 with the filing of an unfair labor practice charge – 27-CA-243789. On September 24, 2019, that charge was first amended, and a second charge was filed – 27-CA-248764. On January 3, 2020, a second amended charge was filed in 27-CA-243789, and a first amended charge was filed in 27-CA-248764.

On January 16, 2020, Respondent filed a full position statement with the region bringing to its attention the Board's December 23, 2019 decision in *United Parcel* and the legal precedent that the allegations in the charges should be deferred to the parties' grievance-arbitration process. One day later, on January 17, 2020, the regional office issued its original consolidated complaint in the case. (Respondent Exhibit No. 1).

On January 31, Respondent answered that complaint. On that same day, the regional office filed an amended consolidated complaint. (Respondent Exhibit No. 2). The amended consolidated complaint set a hearing for the case on March 18, 2020.

FACTS

Amalgamated Sugar and the BCTGM have had a long and productive collective bargaining relationship which stands at least 60 years. The parties' collective bargaining agreement, which expires on July 31, 2020, encompasses four facilities and their agricultural maintenance operations, and the total employees covered is over 1,600. The Nampa facility has 544 covered employees.

There have been no strikes or lockouts for at least 40 years. There have been very few unfair labor practice charges filed over these years, and there has never been a charge alleging that

Amalgamated Sugar discriminated against employees or retaliated against employees in connection with the grievance-arbitration procedure and that the Company made resort to the procedure "unpromising or futile" until this case.

In fact, for the various plants covered by the parties' agreement, over the last two years, 2018 and 2019, there have been 84 grievances in 2018, 31 involving the Nampa facility which is the subject of this case, and 84 grievances in 2019, with 37 involving the Nampa facility. During this time there have been three arbitration cases involving grievances, and grievances during this time have been settled, withdrawn, and/or are pending. Indeed, grievances have continued to be filed and processed during the pendency of the complaint allegations.

The General Counsel of Amalgamated Sugar, Scott Blickenstaff, who has full and complete authority and responsibility for all legal matters of the corporation, including the collective bargaining agreements and the grievance-arbitration procedures, has committed and promised under oath in his affidavit (Respondent Exhibit No. 3):

a. To waive any contractual or statutory time limitations for processing the grievances which are the allegations in the charges in this case;

b. To ensure there is no discrimination or animosity to employees' use of the grievance-arbitration process in Article 15 of the collective bargaining agreement;

c. To ensure there is and will not be any retaliation against employees who use the grievance-arbitration process in Article 15; and

d. That every allegation in the case can be grieved under a provision or provisions of the parties' collective bargaining agreement, which include job assignments, transfers, promotions, raises, discipline/warnings, non-discrimination, threats, pay for working the correct classifications, and poor performance appraisals.

The Plant Manager at Amalgamated Sugar's Nampa, Idaho facility, is Dave Hawk. At the plant level, Hawk has overall and final authority over the processing and administration of

grievances, and he is assisted by human resources. No other supervisor has this authority. Hawk has committed and promised under oath in his affidavit (Respondent Exhibit No. 4):

a. To waive any contractual or statutory time limitations for processing the grievances which are the allegations in the charges in this case;

b. To ensure there is no discrimination or animosity to employees' use of the grievance-arbitration process in Article 15 of the collective bargaining agreement;

c. To ensure there is and will not be any retaliation against employees who use the grievance-arbitration process in Article 15; and

d. That every allegation can be grieved under a provision or provisions of the parties' bargaining agreement, which include job assignments, transfers, promotions, raises, discipline/warnings, non-discrimination, threats, pay for working the correct classifications, and poor performance appraisals.

The collective bargaining agreement, which due to its size has not been included as an exhibit, but which has been submitted to the NLRB in the investigation, is comprehensive and detailed and covers the employee grievances which are the subject of the charges' allegations. Respondent has included as an exhibit Article 15 of the Agreement – The Grievance-Arbitration Provision. (Respondent Exhibit No. 5). Also noteworthy are Articles 12, 12.10 and 18, 18.14 that provide no illegal discrimination by the Company against employees. Also significant is Article 14, Discipline and Discharge, which states in part: "An employee who believes his discipline or discharge is not justified shall have recourse to the grievance procedure under the Agreement." (Emphasis supplied.)

ARGUMENT

The very recent decision in *United Parcel* occurred during the conclusion of the active investigation of the charges. It is a seminal case, and in its position statement of January 16, 2020, Amalgamated Sugar brought the decision to the attention of the region.

United Parcel and the cases cited by the Board in the decision establish that section 8(a)(1), 8(a)(3) and 8(a)(5) allegations qualify for deferral to arbitration under the traditional, long-established court and NLRB standards, prior to *Babcock* and *Wilcox*. In particular, *United Technologies* was reinstated with its standards for pre-arbitration deferral.

In that case, the dispute centered upon a statement a foreman made to an employee and a shop steward during the course of a first-step grievance meeting allegedly concerning possible adverse consequences that might flow from a decision by the employee to process her grievance to the next step. It was an alleged threat violative of section 8(a)(1). That threat was found cognizable under the broad grievance-arbitration provision of the parties' collective bargaining agreement and appropriate for deferral.

There are other Board decisions upholding deferral in facts similar to the ones in this case. *National Radio Co.*, 198 NLRB 527 (1972) (deferral where disciplinary suspension and discharge of an active union adherent in violation of section 8(a)(3) as well as various changes in terms and conditions in violation of section 8(a)(5)); *United Aircraft Corp.*, 204 NLRB 879 (1973) (Board overrules ALJ conclusion that the history of unfair labor practices combined with the violations alleged in that case rendered deferral inappropriate); *Postal Service*, 270 NLRB 979 (1984) (deferring to arbitration allegations that an employer violated section 8(a)(1) by threatening an employee with discharge because of his union activities); *United Beef Combo*, 272 NLRB 66 (1984) (deferring to arbitration allegations that employer violated sections 8(a)(1) and 8(a)(3) by harassing and discharging employee engaged in processing grievances); *United Parcel, supra*, (authorized deferral in the firing of a union shop steward).

The allegations in the instant case contain similar section 8(a)(1) and 8(a)(3) allegations, though no discharges. Indeed, in several instances, the allegations where deferral has been found

appropriate in the above cases assert far more misconduct than the allegations in this case. In those cases, as in this case, the alleged conduct did not arise to a level that rendered use of the grievance machinery "unpromising or futile."

Under *United Technologies*, and the standards it set forth for deferral from *Collyer Insulated Wire*, 192 NLRB 8378 (1971), deferral is appropriate in this case. **First**, there is a long and productive collective bargaining relationship, **second**, the parties' contract provides for arbitration in a very broad range of disputes covering the allegations in this case, **third**, the grievance- arbitration clause clearly encompasses the dispute at issue, **fourth**, Amalgamated Sugar has manifested its willingness to utilize arbitration to resolve the dispute, **fifth**, the dispute is eminently well suited for resolution by arbitration, and **sixth**, there is no animosity by Amalgamated Sugar to employees exercising protected rights. As *United Technologies* requires, Respondent waives any timeliness provisions of the parties' agreement.

A Long, Productive Collective Bargaining Relationship

Amalgamated Sugar and the Union have a collective bargaining relationship that spans over 60 years. It is a stable relationship. There have been no strikes or lockouts involving the Union and the Company in anyone's memory – easily more than 40 years. Over the last two years, 2018 and 2019, there have been 84 grievances in 2018, 31 involving the Nampa facility, and 84 grievances in 2019, with 37 involving the Nampa facility. During this time there have been three arbitration cases involving grievances, and grievances over the time have been settled, withdrawn, and/or are pending. Grievances have continued to be filed and processed during the pendency of this case. There is no issue of fact about the long, productive collective bargaining relationship of the parties.

The Parties' Collective Bargaining Agreement Provides for Arbitration in a Very Broad Range of Disputes

As mentioned earlier, the parties have had a collective bargaining relationship and agreement for many, many years. The agreement was submitted to the region. Article 14 addresses discipline and discharge, Article 11 – promotions, transfers, and vacancies, and Article 19 – wags and wage eligibility. Articles 12.10 and 18.14 specifically provide no illegal discrimination by the Company against employees. To the extent that there may be question as to the arbitrability of some items, that issue is for the arbitrator. *Norfolk, Portsmouth, Whole Sale Beer Distributors Association*, 196 NLRB 1150 (1972); *United Aircraft Corp., supra*, at p. 88, fn. 5. There is no issue of fact that parties' agreement provides for arbitration in a very broad range of disputes.

The Arbitration Clause in the Contract Clearly Encompasses the Dispute at Issue in the Charge Allegations

There is nothing in the arbitration clause that forecloses grievances on the allegations in the case and their ultimate arbitration. Article 15 is a traditional, broad grievance and arbitration procedure. (See Respondent's Exhibit No. 5). It contains steps and even an employee committee. Nothing about the article restricts the type of workplace complaints that may be grieved. The language openly contemplates a very broad range of disputes, including each one in the complaint.

Amalgamated Sugar Asserts its Willingness to Utilize Arbitration to Resolve the Disputes

Amalgamated Sugar's January 16, 2020 position statement, its answer to the original consolidated complaint, its answer to the amended complaint, and this motion for summary judgment all manifest the Company's willingness to utilize arbitration to resolve the grievances contained in the allegations. That should come as no surprise given the parties' past history and even current history with grievances being filed and processed.

More significantly, beyond just a willingness, there is a commitment and promise under oath from the leadership of Amalgamated Sugar to use the arbitration process to resolve the dispute. The Company's General Counsel, Scott Blickenstaff, has made this sworn commitment. (See Respondent Exhibit No. 3). He would do so again at trial if this motion should not be granted.

Dave Hawk is the Plant Manager at the Nampa facility who has overall and final authority over grievances in the workplace. He, too, under oath, commits and promises to utilize arbitration to resolve disputes. (See Respondent Exhibit No. 4). The dispute is eminently well suited to resolution by arbitration.

Blickenstaff and Hawk have overall and final authority over the grievance procedure and arbitration. No other supervisors have any authority for arbitration, including the four named supervisors in the complaint, two of whom who just moved from hourly to supervision in June 2019 in the midst of the allegations in the case. "Such occasional first level supervisory misconduct does not, in our view, necessarily establish a disinclination on the part of Respondent to accept the reality of collective representation or to honor its contractual commitments dealing with procedures for dispute resolution." *United Aircraft Corp.*, *supra*, at 880.

There is no issue of fact about Amalgamated Sugar's willingness and commitment to utilize arbitration to resolve the dispute.

The Employer Has No Animosity to Employees' Exercise of Their Protected Rights or to the Grievance-Arbitration Machinery

Amalgamated Sugar's lack of animosity has been manifested throughout the case. Its representations of not just a willingness but a commitment to move forward with arbitration evinces a lack of animosity.

The affidavit of Scott Blickenstaff, the Company's General Counsel, has committed and promised under oath to waive any contractual or statutory time limitations for processing the

grievances which are the allegations in the charges in this case, to ensure there is no discrimination or animosity to employees' use of the grievance-arbitration process in Article 15, to ensure there is and will not be any retaliation against employees who use the grievance-arbitration process set forth in Article 15, and a commitment that every allegation can be grieved under a provision or provisions of the parties' collective bargaining agreement.

Similarly, Dave Hawk, the Plant Manager at the Nampa facility, makes similar commitments and promises under oath. Hawk is located in the plant and has the overall and final authority for complaints and grievances from employees. No other employee set forth in the complaint, or otherwise at the Nampa plant, has this authority. This includes the four supervisors set forth in the complaint – Craig Ashcraft, Paul Munster, Mark Edwards, and Steve Penrod.

The ongoing past and current practice of the Company shows that it actively participates in the grievance and arbitration procedure, even while this case has been moving forward. While it could be argued that the Company is doing this after the fact of the charges, the long history of adjusting grievances throughout all 4 covered plants with over 1,600 employees belies any such allegation. The 2018 and 2019 grievance history clearly demonstrates this.

When the foregoing factors are analyzed, they fall within NLRB precedent of a lack of the kind of animosity that would meet a narrow exception to deferral. They militate against any finding that the employees have been foreclosed from the contract's grievance-arbitration process or that the use of the grievance-arbitration machinery is "unpromising or futile." *United Technologies*, at p. 560, fn. 21. The overwhelming willingness and commitment of Amalgamated Sugar to its grievance-arbitration procedure supports deferral under *United Parcel* and the strong NLRB precedent supporting deferral.

There are 11 section 8(a)(1) allegations in the case. As mentioned earlier, on information and belief, 5 of the 11 relate to a single incident which means there would be six (6) arbitrations on these allegations. (Respondent Exhibit No. 2, par. 5, 5(e) – 5(i)). Also 10 of them involve to a single supervisor, Craig Ashcraft, the Facility Manager. Five of those 10 allegations involving Craig Ashcraft also involve two other employees – Mark Edwards and Paul Munster. Neither Edwards nor Munster became supervisors until June 16, 2019 and June 1, 2019, respectively, and so do not represent any substantial evidence that would contribute to "futility." More significantly, these 5 allegations relating to a June 2019 incident were grieved by the three employees involved, and the parties resolved their grievances on July 10, 2019. Ashcraft, Edwards, and Munster were not a part of the administration of the grievance process or the grievance resolution in this instance.

Even accepting as fact that Ashcraft and the other three supervisors had animosity, it is insufficient as a matter of law, and the overwhelming facts to the contrary, to establish a legal rejection by the Respondent of the principles of collective bargaining. Objectively, the conduct is not of such a character as to render the use of the grievance-arbitration machinery "unpromising or futile."

The same can be said for the four section 8(a)(3) allegations. Two of the allegations involve an employee who was allegedly assigned more onerous working conditions and also assigned to a different work area. The other two allegations are that two employees were denied wage increases. There is nothing about these allegations that manifest or evince animosity by the Company to the grievance-arbitration procedure or that its use would be "futile" to the employees involved to resolve these contractual issues. Indeed, these four allegations are more tailored for a collectively bargained grievance-arbitration procedure than an unfair labor practice case.

"Futility" to the grievance-arbitration process is not a factual issue in this case even despite the recent best efforts of the region to make it so. After Respondent submitted its position on January 16, 2020, raising the very recent decision in *United Parcel*, the region issued its original complaint the very next day on January 17. Most of the allegations in that complaint, either alone or together, did not allege such animosity as would make grieving the allegations "unpromising or futile."

After having the benefit of Respondent's January 16, 2020 position statement, however, the region decided to file an amended consolidated complaint on January 31 – the day Respondent's answer to the original complaint was due. It is in that amended complaint that the region first attempted to plead comprehensive "futility" to the grievance-arbitration procedure for the apparent purpose of blocking deferral. The amendments related only to language to thwart deferral.

At paragraph 5, which alleges the section 8(a)(1) allegations, the region in sub-paragraphs 5(f) – (k) at the end of each sentence added, "... including filing a grievance." At sub-paragraph 5(b), the region added "... terms of the collective bargaining agreement..."

At paragraph 6, which alleges the four (4) section 8(a)(3) violations involving pay raises and work assignments, the amended complaint, similar to paragraph 5, attempts to newly allege comprehensive animosity and futility to the grievance procedure at sub-paragraphs (e), (f), and (g) by Respondent, which was not contained in the original consolidated complaint.

The changes in the amended complaint are a direct response to Respondent's January 16, 2020 position statement on *United Parcel* and request for deferral. They certainly could have been part of the original complaint, but were not. Even with these new amendments, the modified allegations are insufficient as a matter of law to establish that the use of the parties' grievance-

arbitration machinery is "unpromising or futile" in this instance. The parties' long history of a collective bargaining relationship, the historical and active involvement of the parties in the grievance-arbitration procedure, and the commitment by Company leadership to arbitrate is undisputed evidence that overcomes last minute, convenient allegations in a pleading.

There is no genuine issue of fact in this case of Respondent-created futility to the grievance-arbitration machinery.

Amalgamated Sugar Waives Any Timeliness Provisions of the Grievance-Arbitration Provision

In affidavits that accompany this motion, Amalgamated Sugar's General Counsel, Scott Blickenstaff, and the Plant Manager of the Nampa facility, Dave Hawk, under oath in their affidavits agreed to waive any contractual or statutory timeliness limitations for grieving and arbitrating the allegations in the case.

CONCLUSION

There is no genuine fact to be decided on the issue of deferral. The Board case law on deferral encompasses the allegations, and the Company's commitment to arbitrate the cases, like it has done in the past, is genuine. More importantly, deferral to arbitration in this case does not end the NLRB's statutory oversight of the charges and the arbitration of the grievances. If there is any resistance, refusal, or inordinate delay, the NLRB can step back in and take the charges to trial. As the Board has said: "At least, we think there is sufficient promise ... to justify a temporary withholding of our processes and to give the parties an opportunity to make their own machinery work." *United Aircraft Corp.*, *supra*, at 881.

Another consideration is the nature of the complaints that form the grievances/alleged violations. They are truly the heart and soul of collective bargaining agreements. While the NLRB certainly has the statutory authority to proceed, by not deferring the Board will be getting into

everyday workplace issues such as whether a promotion should be granted or not, whether a person was wrongfully assigned to a drag line, and whether someone who failed a mechanical test has his or her statutory rights violated. This will become the case if any of these type of claims can be framed in a charge in terms of "animosity" and "futility" to the grievance-arbitration process or employees' protected rights. *United Technologies*, (..."we are not particularly desirous of inviting any labor organization ... to bypass their [sic] own procedures and to seek adjudication by this Board of the innumerable individual disputes which are likely to arise in the day-to-day relationship between employees and their immediate supervisors ..."). *Id.* at 559.

Amalgamated Sugar does acknowledge that there can be instances when this occurs. But by the same token, using "magic statutory words" that can be added to any allegation/grievance and turn it into a non-deferrable statutory violation conflicts with the strong, historical policy favoring the arbitration of grievances under collectively bargained agreements.

The timing of the *United Parcel* decision in relation to this case may also have played a part on the issue of deferral. This is what happened in *United Aircraft Corp.*, "However, the controversy arose at a time when the Board decisions may have led the parties to conclude that the Board would not deter to arbitration but would consider that issue on the merits." *Id.*, at 881.

Respondent, The Amalgamated Sugar Company, LLC, respectfully requests that the NLRB grant this motion for summary judgment to bolster the efficacy of the *United Parcel* decision and the Board's admonishment that it apply "to all pending cases in whatever stage." (Emphasis supplied.)

Respectfully submitted this 18th day of February, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing Motion for Summary Judgment has been served by email on the following parties this 18th day of February, 2020.

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27

AMALGAMATED SUGAR CO., LLC

and

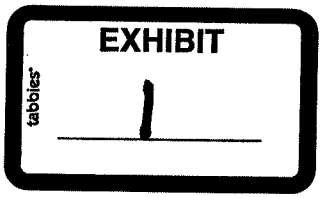
Cases 27-CA-243789
27-CA-248764

BAKERY CONFECTIONERY, TOBACCO WORKERS & GRAIN MILLERS, LOCAL 284g, AFL-CIO

ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 27-CA-243789 and Case 27-CA-248764, which are based on charges filed by Bakery, Confectionery, Tobacco Workers & Grain Millers, Local 284g, AFL-CIO (Charging Party), against Amalgamated Sugar Co., LLC (Respondent) are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the



Board's Rules and Regulations, and alleges Respondent has violated the Act as described below.

1.

(a) The charge in Case 27-CA-243789 was filed by the Charging Party on June 24, 2019, and a copy was served on Respondent by U.S. mail on the same date.

(b) The first amended charge in Case 27-CA-243789 was filed by the Charging Party on September 23, 2019, and a copy was served on Respondent by U.S. mail on September 24, 2019.

(c) The second amended charge in Case 27-CA-243789 was filed by the Charging Party on January 2, 2020, and a copy was served on Respondent by U.S. mail on January 3, 2020.

(d) The charge in Case 27-CA-248764 was filed by the Charging Party on September 24, 2019, and a copy was served on Respondent by U.S. mail on the same date.

(e) The first amended charge in Case 27-CA-248764 was filed by the Charging Party on January 2, 2020, and a copy was served on Respondent by U.S. mail on January 3, 2020.

2.

(a) At all material times, Respondent has been a limited liability company with an office and a place of business in Nampa, Idaho (Nampa facility), and has been engaged in the manufacturing, processing, and nonretail sale of sugar.

(b) Annually, in conducting its operations described above in paragraph 2(a), Respondent sold and shipped from its Nampa, Idaho facility goods valued in excess of $50,000 directly to points outside the State of Idaho.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3.

At all material times, the Charging Party has been a labor organization within the meaning of Section 2(5) of the Act.

4.

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Craig Ashcraft	-	Plant General Manager
Mark Edwards	-	Mechanical Supervisor
Paul Munster	-	Operations Supervisor
Steve Penrod	-	Supervisor

5.

(a) About the end of December 2018, Respondent, by Plant General Manager Craig Ashcraft, at its Nampa facility, threatened to fail an employee on his mechanical review board in retaliation for the employee asserting his contractual rights.

(b) About the end of December 2018, Respondent, by Plant Manager Craig Ashcraft, told employees that Respondent did not have to abide by the agreements Respondent makes with the Charging Party.

(c) About January 2019, Respondent, by Plant Manager Craig Ashcraft and Mechanical Supervisor Mark Edwards, at its Nampa facility, threatened to reassign an employee in retaliation for filing a grievance.

(d) About February 2019, Respondent, by Plant Manager Craig Ashcraft, at its Nampa facility, threatened an employee with discharge for pursuing a grievance.

(e) About June 2019, Respondent, by Plant Manager Craig Ashcraft, at its Nampa facility, threatened employees with discharge if the employees pursued grievances challenging their discipline.

(f) About June 2019, Respondent, by Plant Manager Craig Ashcraft and Operations Supervisor Paul Munster, at its Nampa facility, interrogated an employee about his union activities.

(g) About June 2019, Respondent, by Plant Manager Craig Ashcraft and Operations Supervisor Paul Munster, at its Nampa facility, threatened to terminate an employee because the employee engaged in union activities.

(h) About June 2019, Respondent, by Plant Manager Craig Ashcraft and Operations Supervisor Paul Munster, at its Nampa facility, threatened to reassign an employee because the employee engaged in union activities.

(i) About June 2019, Respondent, by Plant Manager Craig Ashcraft and Operations Supervisor Paul Munster, at its Nampa facility, implied that an employee would be terminated because the employee engaged in union activities.

(j) About August 2019, Respondent, by Supervisor Steve Penrod, at its Nampa facility, told an employee that the employee would not receive a positive evaluation because he engaged in union activities.

(k) About August 2019, Respondent, by Plant Manager Craig Ashcraft, at its Nampa facility, threatened to withhold work assignments from an employee because of the employee's union activities.

6.

(a) In about June 2019, Respondent assigned employee Mark Gamble more onerous working conditions.

(b) In about August 2019, Respondent denied employees Justin Stevens and Brady Pierce wage increases.

(c) In about September 2019, Respondent assigned employee Mark Gamble to a different work area.

(d) Respondent engaged in the conduct described above in paragraphs 6(a), 6(b), and 6(c), because the named employees of Respondent assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

7.

By the conduct described above in paragraph 5, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

8.

By the conduct described above in paragraph 6, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

9.

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before** January 31, 2020, **or postmarked on or before January 30, 2020**. Respondent also must serve a copy of the answer on each of the other parties.

The answer must be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **E-File Documents,** enter the NLRB Case Number, and follow the detailed instructions. Responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in

technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on Tuesday, February 25, 2020, AT 9:00 a.m., at the Treasure Valley Community College located on the third floor at 205 S. 6th Ave. Caldwell, ID 83605, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to

appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: January 17, 2020

Paula S. Sawyer

PAULA S. SAWYER
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 27
Byron Rogers Federal Office Building
1961 Stout Street, Suite 13-103
Denver, CO 80294

Attachments

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27

AMALGAMATED SUGAR CO., LLC

and

Cases 27-CA-243789
27-CA-248764

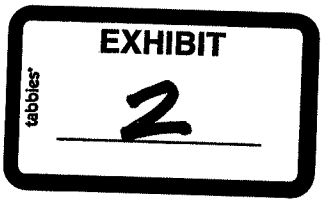
BAKERY CONFECTIONERY, TOBACCO WORKERS & GRAIN MILLERS, LOCAL 284g, AFL-CIO

AMENDED CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

This Amended Complaint and Notice of Hearing is based on charges filed by the Bakery Confectionary, Tobacco Workers & Grain Millers, Local 284g, AFL-CIO (Charging Party). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Board's Rules and Regulations, and alleges that Amalgamated Sugar Co., LLC (Respondent) has violated the Act as described below:

1.

(a) The charge in Case 27-CA-243789 was filed by the Charging Party on June 24, 2019, and a copy was served on Respondent by U.S. mail on the same date.



(b) The first amended charge in Case 27-CA-243789 was filed by the Charging Party on September 23, 2019, and a copy was served on Respondent by U.S. mail on September 24, 2019.

(c) The second amended charge in Case 27-CA-243789 was filed by the Charging Party on January 2, 2020, and a copy was served on Respondent by U.S. mail on January 3, 2020.

(d) The charge in Case 27-CA-248764 was filed by the Charging Party on September 24, 2019, and a copy was served on Respondent by U.S. mail on the same date.

(e) The first amended charge in Case 27-CA-248764 was filed by the Charging Party on January 2, 2020, and a copy was served on Respondent by U.S. mail on January 3, 2020.

2.

(a) At all material times, Respondent has been a limited liability company with an office and a place of business in Nampa, Idaho (Nampa facility), and has been engaged in the manufacturing, processing, and nonretail sale of sugar.

(b) Annually, in conducting its operations described above in paragraph 2(a), Respondent sold and shipped from its Nampa, Idaho facility goods valued in excess of $50,000 directly to points outside the State of Idaho.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3.

At all material times, the Charging Party has been a labor organization within the meaning of Section 2(5) of the Act.

4.

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Craig Ashcraft	-	Plant General Manager
Mark Edwards	-	Mechanical Supervisor
Paul Munster	-	Operations Supervisor
Steve Penrod	-	Supervisor

5.

(a) About the end of December 2018, Respondent, by Plant General Manager Craig Ashcraft, at its Nampa facility, threatened to fail an employee on his mechanical review board in retaliation for the employee invoking his rights under the collective bargaining agreement between the Charging Party and Respondent.

(b) About the end of December 2018, Respondent, by Plant Manager Craig Ashcraft, told an employee who filed a grievance that Respondent did not have to abide by the terms of the collective bargaining agreement between the Charging Party and Respondent.

(c) About January 2019, Respondent, by Plant Manager Craig Ashcraft and Mechanical Supervisor Mark Edwards, at its Nampa facility, threatened to reassign an employee in retaliation for the employee filing a grievance.

(d) About February 2019, Respondent, by Plant Manager Craig Ashcraft, at its Nampa facility, threatened an employee with discharge for pursuing a grievance.

(e) About June 2019, Respondent, by Plant Manager Craig Ashcraft, at its Nampa facility, threatened employees with discharge if the employees pursued grievances challenging their discipline.

(f) About June 2019, Respondent, by Plant Manager Craig Ashcraft and Operations Supervisor Paul Munster, at its Nampa facility, interrogated an employee about his union activities, including filing a grievance.

(g) About June 2019, Respondent, by Plant Manager Craig Ashcraft and Operations Supervisor Paul Munster, at its Nampa facility, threatened to terminate an employee because the employee engaged in union activities, including filing a grievance.

(h) About June 2019, Respondent, by Plant Manager Craig Ashcraft and Operations Supervisor Paul Munster, at its Nampa facility, threatened to reassign an employee because the employee engaged in union activities, including filing a grievance.

(i) About June 2019, Respondent, by Plant Manager Craig Ashcraft and Operations Supervisor Paul Munster, at its Nampa facility, implied that an employee would be terminated because the employee engaged in union activities, including filing a grievance.

(j) About August 2019, Respondent, by Supervisor Steve Penrod, at its Nampa facility, told an employee that the employee would not receive a positive evaluation because he engaged in union activities, including filing a grievance.

(k) About August 2019, Respondent, by Plant Manager Craig Ashcraft, at its Nampa facility, threatened to withhold work assignments from an employee because of the employee's union activities, including filing a grievance.

6.

(a) In about June 2019, Respondent assigned employee Mark Gamble more onerous working conditions.

(b) In about August 2019, Respondent denied employee Justin Stevens a wage increase.

(c) In about August 2019, Respondent denied employee Brady Pierce a wage increase.

(d) In about September 2019, Respondent assigned employee Mark Gamble to a different work area.

(e) Respondent engaged in the conduct described above in paragraphs 6(a), and 6(d), because employee Mark Gamble filed a grievance and engaged in concerted activities, and to discourage employees from engaging in these activities.

(f) Respondent engaged in the conduct described above in paragraph 6(b), because employee Justin Stevens invoked his rights under the collective bargaining agreement between the Charging Party and Respondent, and engaged in concerted activities, and to discourage employees from engaging in these activities.

(g) Respondent engaged in the conduct described above in paragraph 6(c), because employee Brady Pierce, in his capacity as the Charging Party's Vice-President, filed grievances on behalf employees, including Mark Gamble, and engaged in concerted activities, and to discourage employees from engaging in these activities.

7.

By the conduct described above in paragraph 5, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

8.

By the conduct described above in paragraph 6, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

9.

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before February 14, 2020, or postmarked on or before February 13, 2020.** Respondent also must serve a copy of the answer on each of the other parties.

The answer must be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **E-File Documents,** enter the NLRB Case Number, and follow the detailed instructions. Responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of

electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on Wednesday, March 18, 2020, at 9:00 a.m., at the Fish Wildlife and Parks Department, Conference Room, 352 I-94 Business Loop, Miles City, Montana, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: January 31, 2020

LETICIA PEÑA
ACTING REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 27
Byron Rogers Federal Office Building
1961 Stout Street, Suite 13-103
Denver, CO 80294

Attachments

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27

AMALGAMATED SUGAR CO., LLC

and **Cases: 27-CA-243789**
27-CA-248764

BAKERY CONFECTIONERY, TOBACCO WORKERS & GRAIN MILLERS, LOCAL 284g, AFL-CIO

STATE OF IDAHO

COUNTY OF Ada

AFFIDAVIT OF SCOTT BLICKENSTAFF

COMES NOW, Scott Blickenstaff, who under oath, did depose and say:

1. My name is Scott Blickenstaff. I am over 18 years of age, and am in all respects competent to make this affidavit. I am making this affidavit based upon my own personal knowledge, and the information stated herein is true and correct.

2. I am General Counsel of The Amalgamated Sugar Company LLC.

3. In my capacity as General Counsel, I have final and complete legal authority at all of the company's represented facilities over employee grievances and any arbitrations of grievances.

4. In connection with the allegations in this case, I commit and promise to waive any contractual or statutory time limitations for processing the grievances which form the allegations in this case.

5. I will ensure there is no discrimination or animosity to employees' use of the grievance-arbitration process in Article 15 of the collective bargaining agreement.

EXHIBIT
tabbies
3

6. I will ensure there is and will not be any retaliation against employees who use the grievance-arbitration process.

7. All of the allegations in this case are grievable under the parties' collective bargaining agreement, including job assignments, transfers, promotions, raises, discipline/warnings, non-discrimination, threats, pay for working the correct classifications, poor performance appraisals, and attendance.

8. There have been no strikes or lockouts involving Amalgamated Sugar and the BTCGM for more than 40 years.

9. In 2018, the Nampa plant had 31 grievances and in 2019 it had 37 grievances.

10. In 2018 and 2019, there have been three (3) arbitration cases, and grievances during this time have been settled, withdrawn, and/or are pending.

11. Grievances have continued to be filed by employees during the pendency of this case.

Further affiant sayeth not.

Scott Blickenstaff

Sworn to and subscribed before me
this 18th day of February, 2020.

Eileen Reed
Notary Public

EILEEN REED
NOTARY PUBLIC
MY COMMISSION
EXPIRES 3-17-2022
STATE OF IDAHO
COMMISSION NUMBER 67342

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27

AMALGAMATED SUGAR CO., LLC

and **Cases: 27-CA-243789**
27-CA-248764

BAKERY CONFECTIONERY, TOBACCO WORKERS & GRAIN MILLERS, LOCAL 284g, AFL-CIO

STATE OF IDAHO

COUNTY OF Canyon

AFFIDAVIT OF DAVE HAWK

COMES NOW, Dave Hawk, who under oath, did depose and say:

1. My name is Dave Hawk. I am over 18 years of age, and am in all respects competent to make this affidavit. I am making this affidavit based upon my own personal knowledge, and the information stated herein is true and correct.

2. I am Plant Manager of The Amalgamated Sugar Co., LLC's Nampa, Idaho plant.

3. In my capacity as Plant Manager, I have overall and final authority and responsibility at the Nampa plant for employee grievances and human resources assists me.

4. No other employee at the Nampa plant has this authority or responsibility, and the only other employee with such responsibility and authority is the company's General Counsel, Scott Blickenstaff, in Boise, Idaho.

5. In connection with the allegations in this case, I commit and promise to waive any contractual or statutory time limitations for processing the grievances which form the allegations in this case.

EXHIBIT 4

6. I will ensure there is no discrimination or animosity to employees' use of the grievance-arbitration process in Article 15 of the collective bargaining agreement.

7. I will ensure there is and will not be any retaliation against employees who use the grievance-arbitration process.

8. All of the allegations in this case are grievable under the parties' collective bargaining agreement, including job assignments, transfers, promotions, raises discipline/warnings, non-discrimination, threats, pay for working the correct classifications, poor performance appraisals, and attendance.

9. Grievances have continued to be filed by employees during the pendency of this case.

Further affiant sayeth not.

Dave Hawk

Sworn to and subscribed before me
this 18th day of February 2020.

Notary Public

EILEEN REED
NOTARY PUBLIC
MY COMMISSION
EXPIRES 3-17-2022
STATE OF IDAHO
COMMISSION NUMBER 67342

14.3 UNION REPRESENTATION: Employees have the right to have a Union representative present at an investigatory interview when the employee reasonably believes that disciplinary action may result from statements made during the interview. The disciplinary action includes written and verbal warnings, suspension, and discharge. The employee may request a specific Union representative be present, but if that representative is not reasonably available, another Union representative can attend. The employee is not entitled to a non-employee representative.

ARTICLE 15
EMPLOYEE REPRESENTATION

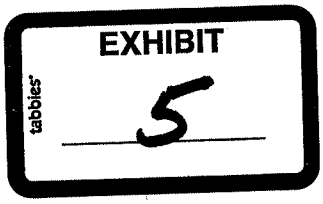
15.1 STEWARDS: The Local Unions may designate at least three (3) of their members to act as Stewards. Such Stewards shall not assume any of the duties or powers of a supervisor. They shall be empowered by the Union to aid in adjusting grievances between employees and the Company. All grievances involving employees shall be adjusted whenever possible between the immediate supervisor or the foreman under them, and the Employee Steward. In case they are unsuccessful in their efforts to adjust grievances with these officials, the grievance shall be submitted to the Employee's Committee hereinafter provided for.

15.2 EMPLOYEES' COMMITTEE: The Local Unions agree to designate from their membership a workmen's committee of three (3) employees whose names shall be posted on the Bulletin Board.

15.3 GRIEVANCE PROCEDURE:
Step 1. An employee claiming a grievance shall put his grievance in writing to his Steward within five (5) scheduled work days of the Employee's knowledge of the occurrence to be grieved. The Steward shall attempt to settle the grievance through discussions with the Grievant and his immediate supervisor. Within five (5) scheduled work days after receipt of the grievance, the Steward shall notify the Employee's Committee that he has or has not succeeded in a settlement of the grievance.

Step 2. If the Steward has failed to settle the grievance with the immediate supervisor in Step 1, the Employee's Committee within three (3) scheduled work days after receiving the grievance from the Steward, shall pass upon the grievance. In the event the Employee's Committee decides the grievance is entitled to further consideration, they shall within two (2) scheduled work days submit the written grievance to the Local Management. The grievance shall briefly state the nature of the grievance, violation alleged and settlement request. The Second Step hearing will be held within five (5) scheduled work days of the receipt of the written grievance from the Employee's Committee. The Company shall give the Union a written decision within five (5) scheduled work days of the Step 2 hearing. Discharge grievances will start in Step 2 and must be submitted directly to the Employee's Committee within five (5) scheduled work days from the time the employee receives the written notice of discharge.

Step 3. In the event the grievance is not settled in Step 2, either party, if they so desire, may within five (5) scheduled work days after receipt of the second step answer, refer the grievance to the International Representative and/or the appropriate Company Official for further handling. If a satisfactory agreement cannot be reached between the International Representative and appropriate Company Official within thirty (30) days, it will then be referred to the local Union



before proceeding into the arbitration procedure. Time is of the essence and all grievances must be handled within the prescribed time limits set forth herein. Failure to do so shall constitute forfeitures of the written grievance by either party failing to do so. Time limits may be extended by mutual agreement between the parties.

15.4 ARBITRATION PROCEDURE: If a grievance is to be carried to arbitration, either the Company or the Union shall notify the other party of its intention by Certified Mail within two (2) weeks after the parties have determined that a satisfactory settlement cannot be reached.

If the Company and the Union are unable promptly to agree upon an impartial arbitrator, the parties will request a list of arbitrators from the Federal Mediation and Conciliation Service. The impartial arbitrator shall be designated in accordance with the procedures of the Federal Mediation and Conciliation Service.

The Arbitrator shall have authority to act only with respect to grievances relating to the interpretation or application of the provisions of this Agreement and his decision shall be final and binding on all parties involved.

Each party shall pay its own expenses incurred in arbitration. The fees and expenses of the Arbitrator shall be borne equally by the Company and the Union.

15.5 EMPLOYEE REPRESENTATION: A Union representative may be present at meetings involving disciplinary action by the Company if requested by the Employee.

ARTICLE 16
STRIKES & LOCKOUTS

16.1 It is mutually agreed that during the life of this Agreement if both parties to same abide by the terms of this Agreement there shall be no cessation of work of the employees or action in any form taken or permitted by them impairing Employer's operation or affecting the distributions of its product, nor shall there be any lockout by Employer.

ARTICLE 17
SEVERANCE PAY

17.1 SEVERANCE PAY GRANTED: In the event the operation of the sugar producing facilities of any of the plants covered by this Agreement is to be permanently discontinued by the Company, all Regular Employees, at the affected factory, with three or more years of continuous service shall be granted severance pay, unless the Company or its successors offers the Employee employment either at the same or other location at a similar or reasonable rate of pay. The Employee will have the option of accepting the transfer to another factory or accepting severance pay.

17.2 BENEFITS ALLOWED: An eligible employee who has completed three (3) full years of continuous service shall receive severance pay of one (1) week's pay (40 hours) based upon the regular straight time base wage rate received by the Employee at the close of the last Campaign prior to the discontinuance of that factory operation. For each additional year of continuous